IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA HARRISONBURG DIVISION

JOHN P. TURNER,	
Plaintiff,)	Civil Action No. 5:17cv00058
v. ,	B
SOCIAL SECURITY ADMINISTRATION,	By: Michael F. Urbanski United States District Judge
Defendant.	

MEMORANDUM OPINION

Proceeding pro se, plaintiff John P. Turner filed the instant complaint against the Social Security Administration, seeking leave to proceed in forma pauperis. Turner previously filed suit against the Commissioner of Social Security in this court on October 1, 2013, after he received a notice from the Appeals Council that his request for review had been denied. Case No. 5:13cv00093 (ECF No. 3). Upon review of Turner's pro se disability appeal, the Commissioner determined that further evaluation of his disability claim was warranted and moved to remand. The court granted that motion, over Turner's objection, and remanded Turner's case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration. Case No. 5:13cv00093 (ECF Nos. 43, 44). The court denied Turner's motion for reconsideration, and the Fourth Circuit Court of Appeals subsequently affirmed the court's decision. Case No. 5:13cv00093 (ECF Nos. 46, 47, 51, 52).

Turner filed the instant social security disability appeal after receiving a notice of unfavorable decision from the Social Security Administration dated January 4, 2017. This notice directs Turner to file an appeal with the Appeals Council, which it appears Turner did

by certified mail on January 6, 2017. ECF No. 2-1, at 8. There is no indication from the records provided, however, that the Appeals Council has issued a ruling on Turner's claim.

This court has jurisdiction to review final decisions of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g), which provides in relevant part:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. . . .

This section provides the exclusive jurisdictional basis for judicial review of claims under the Social Security Act. See 42 U.S.C. § 405(h) ("No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided."). The court's jurisdiction, however, is limited to *final* decisions by the Commissioner. "If a claimant fails to request review from the [Appeals] Council, there is no final decision and, as a result, no judicial review in most cases. In administrative-law parlance, such a claimant may not obtain judicial review because he has failed to exhaust administrative remedies." Sims v. Apfel, 530 U.S. 103, 107 (2000) (internal citations omitted).

Because he appears to be indigent, the court **GRANTS** Turner's motion to proceed in forma pauperis. However, the court lacks jurisdiction over this social security case, because it does not appear that there has been a final decision issued by the Commissioner,

and Turner therefore has not exhausted his administrative remedies. As such, this matter will be DISMISSED without prejudice and STRICKEN from the active docket of the court.

An appropriate Order will be entered.

Entered: 06-08-2017
(s/ Michael 7. Urlanski

Michael F. Urbanski

United States District Judge